

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOHAMED MOSHRIF,)
) CASE NO. C12-1249-RSL-MAT
Petitioner,)
)
v.)
) REPORT AND RECOMMENDATION
SNOHOMISH COUNTY CORRECTIONS)
and SNOHOMISH COUNTY SHERIFF'S)
DEPARTMENT,)
)
Respondents.)
_____)

Petitioner, proceeding *pro se*, submitted a 28 U.S.C. § 2254 habeas corpus petition. (Dkt. 8.) He seeks to challenge a May 23, 2012 conviction for violations of no contact/protection orders. Finding deficiencies in the petition, the Court directed petitioner to show cause, by October 15, 2012, why this matter should not be dismissed without prejudice. (Dkt. 14.) While the Court received a letter from petitioner on the same date it issued the Order to Show Cause (*see* Dkt. 15), that letter did not address any of the deficiencies identified by the Court. Further, to date, petitioner has not submitted any response to the Court's Order

01 to show cause. Accordingly, for the reasons set forth below, the Court recommends that this
 02 matter be dismissed without prejudice.

03 “An application for a writ of habeas corpus on behalf of a person in custody pursuant to
 04 the judgment of a State court shall not be granted unless it appears that . . . the applicant has
 05 exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). The
 06 exhaustion requirement “is designed to give the state courts a full and fair opportunity to
 07 resolve federal constitutional claims before those claims are presented to the federal courts,”
 08 and, therefore, requires “state prisoners [to] give the state courts one full opportunity to resolve
 09 any constitutional issues by invoking one complete round of the State’s established appellate
 10 review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). A complete round of the
 11 state’s established review process includes presentation of a petitioner’s claims to the state’s
 12 highest court. *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994). Here, petitioner concedes he has
 13 not yet sought any relief in state court. (See Dkt. 8 at 2-4.) Accordingly, petitioner may not at
 14 this time pursue habeas relief in this Court.¹

15 The Court also identified another deficiency in the petition. Neither Snohomish
 16 County Corrections, nor Snohomish County Sheriff’s Department is a proper respondent. A
 17 petitioner for habeas corpus relief must name the state officer having custody of him or her as
 18 the respondent to the petition. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *Stanley v.*
 19 *California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). That person typically is the
 20

21 1 The Court directed petitioner to inquire into any state court deadlines relating to the
 22 conviction at issue, noting, for example, that a state court petition for collateral attack on a judgment and
 sentence in a criminal case must be filed within one year after the judgment becomes final. RCW
 10.73.090(1).

warden of the facility in which the petitioner is incarcerated. *Id.* Failure to name the petitioner's custodian deprives federal courts of personal jurisdiction. *Stanley*, 21 F.3d at 360. Petitioner, in this case, failed to identify a proper respondent.

Given the above, the Court recommends that the petition be DISMISSED without prejudice. The Court also concludes that petitioner is not entitled to a certificate of appealability (COA) with respect to his claims. *See* 28 U.S.C. § 2253(c)(2) (COA may issue only where a petitioner has made "a substantial showing of the denial of a constitutional right."). A proposed order accompanies this Report and Recommendation.

DATED this 15th day of November, 2012.



Mary Alice Theiler
United States Magistrate Judge